

§ 116-239.12. Criminal history record checks.

(a) As used in this section:

- (1) "Criminal history" means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates an individual (i) poses a threat to the physical safety of students or personnel or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel. These crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative, and Court Officers; Article 6, Homicide; Article 7B, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.
- (2) "School personnel" means any of the following:
 - a. Member of the advisory board.
 - b. Staff of the laboratory school.
 - c. Independent contractor or employee of an independent contractor of the laboratory school if the independent contractor carries out duties customarily performed by school personnel, whether paid with federal, State, local, or other funds, who has significant access to students or who has responsibility for the fiscal management of the laboratory school.

(b) The chancellor shall adopt a policy, with advice and input from the advisory board, that requires an applicant for a school personnel position to be checked for a criminal history as provided in subsection (c) of this section. The chancellor shall apply the policy uniformly in requiring applicants for school personnel positions to be checked for a criminal history. The chancellor may grant conditional approval of an application while the chancellor is checking a person's criminal history and making a decision based on the results of the check. An applicant for a school personnel position shall not be required to be checked for a criminal history if he or she has received a license within six months of employment that required a criminal history check equivalent to the criminal history check required in subsection (c) of this section.

The chancellor shall not require an applicant to pay for the criminal history record check authorized under this section.

(c) The chancellor shall require the person to be checked by the Department of Public Safety (i) to be fingerprinted and to provide any additional information required by the Department of Public Safety to a person designated by the chancellor or to the local sheriff, the campus police department of the constituent institution, or the municipal police, whichever is more convenient for the person and (ii) to sign a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories. The chancellor shall consider refusal to consent when making employment decisions and decisions with regard to independent contractors. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Department of Public Safety shall provide to the chancellor the criminal history from the State and National Repositories of Criminal Histories of any school personnel for which the chancellor requires a criminal history record check.

The chancellor shall not require school personnel to pay for fingerprints authorized under this section.

(d) The chancellor shall review the criminal history it receives on an individual. The chancellor shall determine whether the results of the review indicate that the individual (i) poses a threat to the physical safety of students or personnel or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel and shall use the information when making employment decisions and decisions with regard to independent contractors. The chancellor shall make written findings with regard to how it used the information when making employment decisions and decisions with regard to independent contractors. The chancellor may delegate any of the duties in this subsection to the principal.

(e) The chancellor shall provide to the State Board of Education the criminal history it receives on a person who is certificated, certified, or licensed by the State Board of Education. The State Board of Education shall review the criminal history and determine whether the person's certificate or license should be revoked in accordance with State laws and rules regarding revocation.

(f) All the information received by the chancellor through the checking of the criminal history or by the State Board of Education in accordance with this section is privileged information and is not a public record but is for the exclusive use of the chancellor or the State Board of Education. The chancellor or the State Board of Education may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(g) There shall be no liability for negligence on the part of the chancellor, the constituent institution, the advisory board, the Subcommittee, the Department of Public Instruction, or the State Board of Education, or their employees, arising from any act taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(h) Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor. (2016-94, s. 11.6(a); 2016-126, 4th Ex. Sess., s. 26; 2017-117, s. 1; 2018-5, s. 10.1(c).)